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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,314	12/23/2004	Marcus Guzmann	102792-390(1105104)	9126
27389 7590 05/13/2009 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER DOUYON, LORNA M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,314	Applicant(s) GUZMANN ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-15 and 19-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15 and 19-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2009 has been entered.

2. Claims 1-8, 10-15, 19-42 are pending.

3. The rejection of claims 1-8, 10-15, 18-32 and 34 under 35 U.S.C. 103(a) as being unpatentable over Smerznak et al. (WO 99/00477) is withdrawn in view of Applicants' amendment.

4. The rejection of claim 33 under 35 U.S.C. 103(a) as being unpatentable over Smerznak as applied to the above claims, and further in view of Fonsny (US 4,846,992) is withdrawn in view of Applicants' amendment.

Claim Rejections - 35 USC § 102/103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-2, 8, 10-15, 19-23, 26, 28-32 and 34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Foley et al. (WO 00/63342), hereinafter "Foley".

Foley teaches a liquid dishwashing detergent product in Example A, Sample E which comprises 16.0 wt% sodium tripolyphosphate, 16.0 wt% potassium tripolyphosphate (a total of 32 wt% salt), 1.0 wt% hydroxide, 0.04 wt% nonionic surfactant, 1.5 wt% nonionic surfactant, 1.0 wt% polyacrylate polymer thickener, 0.0005 wt% dye solution, 0.7 wt% solid prill and balance water (63.7595 wt%) (see page 15, lines 16-34). The composition above minus the water is 36.2405 wt% nonaqueous, therefore, by calculation, the total amount of salt in the nonaqueous component is 88%, [i.e., $(32/36.2405) \times 100 = 88\%$], which meets the required "nonaqueous component comprising a salt content of at least 70% salt"). The solid prills have a diameter of about 750 μm and are formed from a sucrose core coated with a polymeric coating formed from methyl cellulose (the encapsulating agent, which also read on the density aid), which is about 5% by weight of the particle, and have a bluish-green color (see page 16, lines 1-9), and said solid prills read on the primary particles of the instant claims. The resultant particles are insoluble in the liquid composition but are soluble in the wash solution during automatic dishwashing (see page 16, lines 10-11). Foley also teaches that by adding enzymes to the composition in the form of enzyme particles, stability of the enzymes in the composition is enhanced (see page 3, lines 6-9), and the particles are formed as disclosed in US Patent No. 4,965,012, which is incorporated by reference (see page 5, lines 28-33). The preferred composition may additionally comprise an

enzyme stabilizing system (see page 13, lines 17+). In one embodiment, the particles are colored and the dishwashing liquid detergent composition is clear or translucent, so as to make the liquid dishwashing product aesthetically pleasing (see page 5, lines 20). Inasmuch as the composition is clear or translucent (or semi-opaque), the composition should inherently have a transmittance within those recited. In one embodiment, the particles have a dark green color whereas the liquid composition has a light green color, and other preferred color combinations for the polymeric coating on the particles and the liquid dishwashing composition are blue:blue, blue:white; green:green, green:white and green:yellow, respectively (see paragraph 5, lines 20-25). Even though Foley does not explicitly disclose the color of each of the composition and solid prills interacting together to form a third color, it would be inherent for the dyed composition and colored prills to exhibit the same property because same ingredients and proportions have been utilized. The gel density, the difference in the density of the composition and particles, and migration speed of the particles of Foley should inherently be within those recited because same ingredients and proportions have been utilized. Hence, Foley anticipates the claims.

7. Claims 35, 36, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley as applied to the above claims.

Foley teaches the features as described above. In addition, Foley teaches that in liquid detergent compositions there will typically be from 0% to about 90%, preferably from about 20% to about 70%, most preferably from about 40% to about 60% of water

(see page 15, lines 6-8). Foley, however, fails to specifically disclose an amount of water as those required in claims 35-38.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

8. Claims 1-8, 10-15, 19-22, 29-32, 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx (WO 00/47707).

Broeckx teaches laundry detergent products such as heavy duty aqueous or gelled liquid laundry detergents which include one or more low density particles and one

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or more particulate solids , such as enzymes, bleaching agents, builders, chelants, alkalinity sources and surfactants (see abstract). The low density particles include water soluble or water insoluble organic or inorganic materials, microspheres (liquid hydrocarbon-containing and/or gas-containing , and/or hollow) that result in a reduction of the tendency of the particulate solids within a laundry detergent composition to sediment and/or settle out of the laundry detergent composition (see page 6, lines 17-27; page 7, lines 10-17). The particulate solids have a particle size from 1-2000 microns (see page 6, lines 28-30), which may be encapsulated (see page 9, lines 14-15). Liquid laundry compositions can be in concentrated form and the water content is preferably less than 40%, more preferably less than 30% (see page 11, lines 17-22), and the density of the laundry detergent composition ranges from 400 to 1200 g/litre (see page 11, lines 5-6). The density difference between the density of a laundry detergent composition and the density of a particulate solid is less than about 0.2 g/mL (see page 10, lines 3-6). The heavy duty gel laundry detergent composition comprises, by weight of the composition: (a) from about 15% to about 40% of an anionic surfactant; and (b) one or more of ingredients like deterative amine, suitable electrolytes; and may further contain one or more additional deterative additives like non-citrate builders, polymeric dispersing agents (see page 28, lines 14-30), dyes, colorants and mixtures thereof (see page 29, lines 1-2), enzymes and enzyme stabilizing agents (see page 8, lines 28-30). The composition has a viscosity at 20 s^{-1} shear rate of from about 100 cp to about 4,000 cp (see page 29, lines 3-5), and is clear or translucent, i.e. not opaque (see page 29, line 20). Suitable dispersing agent (which reads on thickening agent) includes

polycarboxylates derived from acrylic acid (see page 94, lines 1-14). The gel laundry detergent composition also comprises from 0 to about 10% electrolyte (see page 29, lines 21-27). The compositions will typically comprise at least about 1% builder, preferably from about 10% to about 80% (see page 90, lines 8-13), for example, alkali metal salts of polyphosphates and sulphates (see page 90, lines 21-26), which are salts. Broeckx, however, fails to disclose (1) a water content of from about 20 to 65% by weight, 20-50% or 35-50% by weight, (2) a non-aqueous component comprising a salt content of at least 70%, (3) the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition.

With respect to difference (1) and (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of water and builder through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to difference (3), even though Broeckx does not explicitly disclose the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed

of the particles/solids in the gelled composition it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the gelled composition of Broeckx to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Broeckx teaches the features as described above. Broeckx, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Broeckx in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

10. Claims 1, 3-8, 10-15, 19-32, 34-36, 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corring et al. (US Patent No. 5,141,664), hereinafter "Corring".

Corring teaches a clear gel with opaque particles of an active material uniformly dispersed and suspended within the gel, wherein the active material is surrounded by a protective substance such as an encapsulating layer, and representative of active materials are chlorine and oxygen bleaches, bleach precursors, enzymes, fabric softeners, surfactants, perfumes and mixtures of these materials (see abstract). The cleaning composition comprises (i) a clear gel comprising from 5% to 99.95% water and from 0.05% to 95% of a surfactant; and (ii) opaque particles of an active material uniformly dispersed and suspended within said gel (see col. 2, lines 35-45), wherein the opaque particles read on the primary particles of the instant claims. The composition should possess a viscosity of from about 1,000 to 20,000 cps at 25°C as measured in a Haake Rotovisco RV-100 Viscometer under a shear rate of 5 sec⁻¹ (storage conditions), preferably from about 1,500 to 10,000 cps, optimally between 3,00 and 7,000 cps (see col. 2, lines 56-62). Water will generally be present in an amount ranging from about 25% to 80%, preferably from about 45 to 75%, optimally from about 55 to 65% by weight of the composition (see col. 5, lines 39-42). Normally, the gel comprises a polymeric thickener, for example, crosslinked polymers based upon allyl sucrose modified polyacrylic acid, like Carbopol 941© (see col. 5, line 50 to col. 6, line 12). In conjunction with the polymer thickener, there may be present a co-structurant such as a trivalent metal containing material, for example alumina or hectorite clay (see col. 6, lines 17-35), which read on the secondary particles of the instant claims. A third co-structurant may also be desirable for use in conjunction with the polymeric thickener and trivalent metal containing material, namely a water-soluble structuring chelant, for

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example, carbonates, pyrophosphates and mixtures of these two salts, wherein the amount of the chelant may range anywhere from about 1% up to about 60% by weight of the composition (see col. 6, lines 36-53). Within the context of this invention, the composition is deemed to be clear if the maximum transmittance of light through a sample 2 cm thick is at least 10%, and distinguishes the clear gel with one that is translucent or opaque (see col. 6, last line to col. 7, line 12). Preferably, the opaque particles have particle sizes which range from about 100 microns up to about 3,000 microns average size, preferably from about 500 to about 2,000 microns, optimally between about 850 and 1,500 microns (see col. 7, lines 17-23). The protective substance surrounding the active particles include inorganic salts (which are water-soluble), soaps, homo and copolymers, polyalkoxylates, polyglycolates, organic amides and mixtures thereof (see col. 7, lines 39-50). Inorganic salts may also serve as a diluent protective substance intimately mixed or agglomerated with the active material to form a matrix, the total matrix being covered by a soap, homopolymer, or other organic surface coating (see col. 7, lines 54-59). An example of a homopolymer is polyvinyl alcohol (see col. 7, lines 60-64). Enzymes may be used as the active material and may be deposited or entrapped upon a supporting substrate such as an inorganic salt, aluminosilicate, organic polymer or other non-interactive solid base material (see col. 9, lines 23-31), which supporting substrate reads on the stabilizing aid from the enzyme. In Example 1, Corring teaches a cleaning composition used for automatic dishwashing which comprises a clear gel base formulation comprising 19.0 wt% tetrapotassium pyrophosphate, 7.5 wt% sodium silicate, 6.0 wt% potassium carbonate, 1.0 wt% sodium

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tripolyphosphate, 1.0 wt% potassium hydroxide, 1.0 wt% Carbopol 941, 0.1 wt% alumina (which is known to have a particle size below 50 μm), balance water (see col. 9, line 55 to col. 10, line 9), and to which is added 7.0 wt% encapsulated bleach particles (see col. 10, lines 55-58). By calculation, the percentage of total salt, i.e., tetrapotassium pyrophosphate, sodium silicate, potassium carbonate and sodium tripolyphosphate: $(19.0 + 7.5 + 6.0 + 1.0) \times 0.93 / 40.1$ (total nonaqueous) $\times 100$ is 77.7% (which meets the required "nonaqueous component comprising a salt content of at least 70% salt"; the non-aqueous component being construed as all the other ingredients of the composition other than water). Efficient cleaning of dishes and glassware is seen with the use of the encapsulated bleach particles (see col. 10, line 10 to col. 11, line 25). Minor amounts of various other adjuvants may be present in the gel composition with the proviso that these adjuvants not interfere with clarity, and the adjuvants include perfumes and other functional additives (see col. 6, lines 54-60). It is known that dyes are common components in liquid automatic dishwashing detergent compositions (see col. 1, lines 56-62). Corring, however, fails to disclose the clear gel having a first color, the encapsulated particles having a second color, and the alumina or clay particles having a color, such that the composition has another color as required by the instant claims.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated dyes into the clear gel, as well as to the encapsulated particles and the alumina or silica because this would provide a pleasing aesthetic characteristic on the final product. Even assuming that the prior art's resulting

composition has only one color, please note that the present claim's final color, after all the colors of the gel, primary particles and secondary particles interacted together also forms a final color, therefore, the prior colors of the gel, primary particles and secondary particles are not given patentable weight because these are viewed as product-by-process claims. The final color of the resulting composition of the present claims, after the gel, primary particles and secondary particles have interacted when mixed together, is what is visible to the naked eye, regardless of whether or not the starting materials have different colors prior to mixing, because the present claims are product claims, not process of making, such that the prior state of the starting materials is not given patentable weight.

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foley or Corring as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Foley or Corring teaches the features as described above. Foley or Corring, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Foley or Corring in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can

be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

Response to Arguments

12. Applicants' arguments filed February 25, 2009 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Broeckx (WO 00/47707), Applicants argue that the present claims now incorporate the limitation of former claim 18, which requires that the composition comprise a non-aqueous component having a salt content of at least about 70% by weight, and Applicants note that claim 18 was not included in the rejection over Broeckx or Broeckx in view of Fonsny.

The Examiner respectfully disagrees with the above argument because of the following reasons. Please note that original claim 18 states that "the composition has a salt content of at least 70%, more preferably at least 80% and more preferably at least 90%", however, the present claims 1-4 now require "...a non-aqueous component comprising a salt content of at least 70%..." which is different in meaning from the original claims, the latter being based on the weight of the nonaqueous component, not on the whole composition (as in original claim 18). While the present amended claims 1-4 find support in the specification at page 7, lines 13-15 which recites "...the high ionic strength is preferably provided by a salt content which comprises at least 70%, more preferably at least 80% and most preferably at least 90% of the solid content (the non-aqueous component) of the gel", Broeckx, as stated in paragraph 8 above, teaches that

the compositions will typically comprise at least about 1% builder, preferably from about 10% to about 80% (see page 90, lines 8-13), for example, alkali metal salts of polyphosphates and sulphates (see page 90, lines 21-26). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the builder (which read on salts) through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796

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